

DENNIS J. HERRERA, State Bar #139669  
City Attorney  
ELIZABETH SALVESON, State Bar #83788  
Chief Labor Attorney  
LISA B. BERKOWITZ, State Bar #167657  
Deputy City Attorney  
Fox Plaza  
1390 Market Street, Fifth Floor  
San Francisco, California 94102-5408  
Telephone: (415) 554-3825  
Facsimile: (415) 554-4248  
E-Mail: lisa.berkowitz@sfgov.org

Attorneys for Defendant  
CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

E. K. WADE,

Plaintiff,

vs.

CITY AND COUNTY OF SAN  
FRANCISCO PUBLIC DEFENDER'S  
OFFICE,

Defendant.

Case No. C07-5257 MHP

**DEFENDANT'S ANSWER TO  
PLAINTIFF'S VERIFIED  
COMPLAINT FOR DAMAGES AND  
DEMAND FOR A JURY TRIAL**

Defendant City and County of San Francisco ("City" or "Defendant")<sup>1</sup> hereby answers  
Plaintiff E.K.Wade's Verified Complaint for Damages.

**RESPONSE TO ALLEGATIONS OF COMPLAINT**

1. The City admits this Court has jurisdiction over Plaintiff's complaint.
2. The City admits the allegations of paragraph 2.

<sup>1</sup> Because the San Francisco Public Defender's Office is a City department, it cannot be sued separate and apart from the City and County of San Francisco. See *Talbot v. City of Pasadena* (1938) 28 Cal.App.2d 271, 274.

1           3.       The City admits the allegations of paragraph 3 to the extent plaintiff alleges this  
2 lawsuit should be assigned to the San Francisco division. The City denies all other allegations.

3           4.       The City lacks information or belief sufficient to admit or deny the allegations of  
4 paragraph 4, and on that basis denies such allegations.

5           5.       The City admits the allegations of paragraph 5.

6           6.       The City denies the allegations of paragraph 6 on the basis that plaintiff has only  
7 named one defendant.

8                                   **FIRST CAUSE OF ACTION**

9                                   **(Disparate Treatment Discrimination in Hiring – Race)**

10          7.       Defendant incorporates its responses to paragraphs 1 through 6, infra in response to  
11 paragraph 7.

12          8.       The City admits the allegations of paragraph 8.

13          9.       The City admits the allegations of paragraph 9.

14          10.      The City admits that plaintiff's application was dated July 21, 2006, but denies it was  
15 received by the City on that date. The City lacks information or belief sufficient to admit or deny the  
16 remaining allegations of paragraph 10, and on that basis denies the allegations.

17          11.      The City lacks information or belief sufficient to admit or deny the allegations of  
18 paragraph 11, and on that basis denies the allegations.

19          12.      The City admits the allegations of paragraph 12 to the extent that it did not send  
20 rejection letters to those unsuccessful applicants prior to September 22, 2007.

21          13.      The City lacks information or belief sufficient to admit or deny the allegations of  
22 paragraph 13, and on that basis denies the allegations.

23          14.      The City lacks information or belief sufficient to admit or deny the allegations of  
24 paragraph 14, and on that basis denies the allegations.

25          15.      The City lacks information or belief sufficient to admit or deny the allegations of  
26 paragraph 15, and on that basis denies the allegations.

27          16.      The City lacks information or belief sufficient to admit or deny the allegations of  
28 paragraph 16, and on that basis denies the allegations.

1 17. Paragraph 17 contains no factual allegations and thus the City does not respond.

2 18. Paragraph 18 contains no factual allegations and thus the City does not respond.

3 19. Paragraph 19 contains no factual allegations and thus the City does not respond.

4 20. Paragraph 20 contains no factual allegations and thus the City does not respond.

5 21. The City denies the allegations in paragraph 21 that after plaintiff's rejection, the  
6 position remained open and the City continued to seek applicants from persons of plaintiff's  
7 qualifications. The City also denies plaintiff's allegation that he was the best qualified for the  
8 position, to the extent that inference is alleged.

9 22. The City denies the allegations of paragraph 22.

10 23. The City denies the allegations of paragraph 23.

11 **SECOND CAUSE OF ACTION**

12 **(Disparate Treatment Discrimination in Hiring – Age)**

13 24. The City incorporates its responses to paragraphs 1-23, *infra*.

14 25. The City admits the allegations of paragraph 25.

15 26. The City admits the allegations of paragraph 26.

16 27. The City admits that plaintiff's application was dated July 21, 2006, but denies it was  
17 received by the City on that date. The City lacks information or belief sufficient to admit or deny the  
18 remaining allegations of paragraph 27, and on that basis denies the allegations.

19 28. The City lacks information or belief sufficient to admit or deny the allegations of  
20 paragraph 28, and on that basis denies the allegations.

21 29. The City admits the allegations of paragraph 29 to the extent that it did not send  
22 rejection letters to those unsuccessful applicants prior to September 22, 2007.

23 30. The City lacks information or belief sufficient to admit or deny the allegations of  
24 paragraph 30, and on that basis denies the allegations.

25 31. The City lacks information or belief sufficient to admit or deny the allegations of  
26 paragraph 31, and on that basis denies the allegations.

27 32. The City lacks information or belief sufficient to admit or deny the allegations of  
28 paragraph 32, and on that basis denies the allegations.

33. The City lacks information or belief sufficient to admit or deny the allegations of paragraph 33, and on that basis denies the allegations.

34. Paragraph 34 contains no factual allegations and thus the City does not respond.

35. Paragraph 35 contains no factual allegations and thus the City does not respond.

36. Paragraph 36 contains no factual allegations and thus the City does not respond.

37. Paragraph 37 contains no factual allegations and thus the City does not respond.

38. Paragraph 38 contains no factual allegations and thus the City does not respond.

39. The City denies plaintiff's allegation in paragraph 39 that he was replaced by an employee that was younger than him. The City also denies that plaintiff was the best qualified applicant for the position.

40. The City denies the allegations of paragraph 40.

41. The City denies the allegations of paragraph 41.

### **THIRD CAUSE OF ACTION**

#### **(Disparate Treatment Discrimination in Hiring – Disability)**

42. The City incorporates its responses to paragraphs 1-41, infra.

43. The City admits the allegations of paragraph 43.

44. The City admits the allegations of paragraph 44.

45. The City admits that plaintiff's application was dated July 21, 2006, but denies it was received by the City on that date. The City lacks information or belief sufficient to admit or deny the remaining allegations of paragraph 45, and on that basis denies the allegations.

46. The City lacks information or belief sufficient to admit or deny the allegations of paragraph 46, and on that basis denies the allegations.

47. The City admits the allegations of paragraph 47 to the extent that it did not send rejection letters to those unsuccessful applicants prior to September 22, 2007.

48. The City lacks information or belief sufficient to admit or deny the allegations of paragraph 48, and on that basis denies the allegations.

49. The City lacks information or belief sufficient to admit or deny the allegations of paragraph 49, and on that basis denies the allegations.

1           50.     The City lacks information or belief sufficient to admit or deny the allegations of  
2 paragraph 50, and on that basis denies the allegations.

3           51.     The City lacks information or belief sufficient to admit or deny the allegations of  
4 paragraph 51, and on that basis denies the allegations.

5           52.     Paragraph 52 contains no factual allegations and thus the City does not respond.

6           53.     Paragraph 53 contains no factual allegations and thus the City does not respond.

7           54.     Paragraph 54 contains no factual allegations and thus the City does not respond.

8           55.     Paragraph 55 contains no factual allegations and thus the City does not respond.

9           56.     Paragraph 56 contains no factual allegations and thus the City does not respond.

10          57.     The City lacks information or belief sufficient to admit or deny the allegations of  
11 paragraph 57, and on that basis denies these allegations.

12          58.     The City denies the allegations of paragraph 58.

13          59.     The City denies the allegations of paragraph 59.

14                   **FIRST CAUSE OF ACTION**

15                   **(Disparate Treatment Discrimination in Hiring – Race)**

16           1.     The City denies that plaintiff is entitled to the relief requested.

17           2.     The City denies that plaintiff is entitled to the relief requested.

18           3.     The City denies that plaintiff is entitled to the relief requested.

19           4.     The City denies that plaintiff is entitled to the relief requested.

20           5.     The City denies that plaintiff is entitled to the relief requested.

21           6.     The City denies that plaintiff is entitled to the relief requested.

22           7.     The City denies that plaintiff is entitled to the relief requested.

23           8.     The City denies that plaintiff is entitled to the relief requested.

24           9.     The City denies that plaintiff is entitled to the relief requested.

25           10.    The City denies that plaintiff is entitled to the relief requested.

26           11.    The City denies that plaintiff is entitled to the relief requested.

**SECOND CAUSE OF ACTION**

**(Disparate Treatment Discrimination in Hiring – Age)**

1. The City denies that plaintiff is entitled to the relief requested.
2. The City denies that plaintiff is entitled to the relief requested.
3. The City denies that plaintiff is entitled to the relief requested.
4. The City denies that plaintiff is entitled to the relief requested.
5. The City denies that plaintiff is entitled to the relief requested.
6. The City denies that plaintiff is entitled to the relief requested.
7. The City denies that plaintiff is entitled to the relief requested.
8. The City denies that plaintiff is entitled to the relief requested.
9. The City denies that plaintiff is entitled to the relief requested.
10. The City denies that plaintiff is entitled to the relief requested.
11. The City denies that plaintiff is entitled to the relief requested.

**THIRD CAUSE OF ACTION**

**(Disparate Treatment Discrimination in Hiring – Disability)**

1. The City denies that plaintiff is entitled to the relief requested.
2. The City denies that plaintiff is entitled to the relief requested.
3. The City denies that plaintiff is entitled to the relief requested.
4. The City denies that plaintiff is entitled to the relief requested.
5. The City denies that plaintiff is entitled to the relief requested.
6. The City denies that plaintiff is entitled to the relief requested.
7. The City denies that plaintiff is entitled to the relief requested.
8. The City denies that plaintiff is entitled to the relief requested.
9. The City denies that plaintiff is entitled to the relief requested.
10. The City denies that plaintiff is entitled to the relief requested.
11. The City denies that plaintiff is entitled to the relief requested.



**AFFIRMATIVE DEFENSES**

1  
2 1. As the First Separate and Affirmative Defense to the Complaint, Defendant asserts that  
3 the Complaint, and each and every allegation contained therein, whether considered singly or in  
4 combination, fails to state a claim upon which relief can be granted.

5 2. As the Second Separate and Affirmative Defense to the Complaint, Defendant asserts  
6 that the Complaint and each and every claim contained therein is barred by the applicable statute of  
7 limitations.

8 3. As the Third Separate and Affirmative Defense to the Complaint, Defendant asserts  
9 that Plaintiff has failed to exhaust his administrative, judicial and/or contractual remedies.

10 4. As the Fourth Separate and Affirmative Defense to the Complaint, Defendant asserts  
11 that Plaintiff has failed to mitigate his damages, if any, as required by law.

12 5. As the Fifth Separate and Affirmative Defense to the Complaint, Defendants assert the  
13 Complaint and each and every claim contained therein are barred immunities conferred upon them by  
14 the California Government Code and other applicable provisions of law, including but not limited to  
15 Government Code §§ 825 *et seq.*

16 6. As the Sixth Separate and Affirmative Defense to the Complaint, Defendants assert  
17 that at all times and places alleged, Defendants acted without malice and with a good faith belief in  
18 the propriety of their conduct.

19 7. As the Seventh Separate and Affirmative Defense to the Complaint, Defendant asserts  
20 that at all times and places alleged, Defendant performed and discharged in good faith each and every  
21 obligation, if any, owed to Plaintiff.

22 8. As the Eighth Separate and Affirmative Defense to the Complaint, Defendant asserts  
23 that at all times material herein, their conduct was privileged and/or justified under applicable law.

24 9. As the Ninth Separate and Affirmative Defense to the Complaint and to each and  
25 every allegation contained therein, Defendant asserts that any relief sought by Plaintiff is barred by  
26 the doctrine of laches.

27 10. As the Tenth Separate and Affirmative Defense to the Complaint, Defendants allege  
28 that they are not liable under the provisions of California Government Code §§ 815, 815.2 and/or

820.2, and other applicable provisions of law, in that any damage to Plaintiff as alleged in the Complaint would have resulted from acts or omissions committed in the exercise of discretion vested in public employees.

11. As the Eleventh Separate and Affirmative Defense to the Complaint, Defendant asserts that Plaintiff has failed to set forth a prima facie claim for race, age, and physical disability discrimination under Title VII of the Civil Rights Act of 1964 and the California Fair Employment and Housing Act.

20. As the Twelfth Separate and Affirmative Defense to the Complaint, Defendant asserts that Plaintiff has failed to set forth a prima facie claim for age discrimination under the ADEA.

21. As the Thirteenth Separate and Affirmative defense to the complaint, Defendant asserts that plaintiff has failed to set forth a prima facie claim for physical disability discrimination under the ADA.

WHEREFORE, Defendant pray that Plaintiff take nothing by his Complaint, that Plaintiff's Complaint be dismissed with prejudice, and for the following:

1. For cost of suit herein;
2. For reasonable attorney's fees; and
3. For any such other relief as the Court deems just and proper.
4. Defendant demands a jury trial.

Dated: 11/19/07

DENNIS J. HERRERA  
City Attorney  
ELIZABETH SALVESON  
Chief Labor Attorney  
LISA B. BERKOWITZ  
Deputy City Attorney

By: 

LISA B. BERKOWITZ

Attorneys for Defendant  
CITY AND COUNTY OF SAN FRANCISCO